

Memorandum 2016-12

2016 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's¹ 2016 legislative program. The staff will supplement that information orally, if necessary, at the upcoming meeting.

The remainder of this memorandum discusses issues relating to particular bills. It also discusses a new bill addressing the revocable transfer on death deed.

AB 2881 (COMMITTEE ON JUDICIARY). PUBLICATION OF LEGAL NOTICE

Assembly Bill 2881 is an omnibus bill introduced by the Assembly Committee on Judiciary. Among other things, the bill would implement the Commission's recommendation on *Trial Court Unification: Publication of Legal Notice* (Oct. 2015).

In AB 2881, there are two minor substantive changes from the Commission's recommendation, which were made on the request of the California Land Title Association ("CLTA"). Those changes and a small number of minor technical issues are discussed further below.

Minor Substantive Changes

Prior to the Commission's recommendation being amended into AB 2881, CLTA contacted the committee to request two minor substantive changes. The committee agreed to make them. The staff informally briefed the Commission's Chairperson about those revisions. They are described below.

The Commission now needs to decide whether to accept the changes as compatible with its recommendation. If so, the Commission may also choose to incorporate the changes into its recommendation, which has not yet been printed in final form.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

The main thrust of the Commission's recommendation would be to codify easily-understood descriptions of "public notice districts." Those districts would then be used in lieu of the historical judicial districts that are currently used as the place for notice publication in certain code sections. The recommendation would also make technical conforming revisions.

CLTA's concern involves two of the conforming revisions, in Civil Code Section 2924f and Revenue and Taxation Code Section 3702. Those sections both involve notice of a forced sale of real property. They provide for *posting* of a notice in the judicial district where the property is located. In recommending conforming revisions to those sections, the Commission did not simply substitute "public notice district" for "judicial district." Instead, the Commission recommended that the notices be posted "in the area" of the affected property. Thus:

Civ. Code § 2924f (amended). Home foreclosure sale made under power of sale

2924f. (a) ...

(b)(1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the ~~judicial district in which~~ area of the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks.

...

Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of delinquent taxpayer

3702. ...~~If there is no newspaper of general circulation published in the county seat or in the judicial district, then publication may be made by posting notice in three public places in the county seat or in the judicial district, as the case may be, where no such newspaper is published.~~ If there is no newspaper of general circulation published in the public notice district, then publication may be made by posting notice in three public places in the area of the property. ...

Requiring physical posting of notices in the new “public notice districts” could produce odd results, because property located in unincorporated areas may not fall within *any* public notice district. The language substituted by the Commission would restrict posting to locations near the affected property. The “in the area” language was borrowed from other existing statutes that require local notice posting.²

CLTA expressed concern that the proposed “in the area” language would be too indeterminate, especially for notices as significant as notice of a forced sale of real property. CLTA believes that the two sections should be revised to provide a bright-line rule for where notice must be posted.

After discussions between committee staff, CLTA, and the Commission’s staff, the committee decided to revise the provisions to require posting in the county seat.³ Thus:

Civ. Code § 2924f (amended). Home foreclosure sale made under power of sale

2924f. (a) ...

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which county seat of the county where the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks.

Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of delinquent taxpayer

3702. ... If there is no newspaper published in the county seat or in the ~~judicial~~ public notice district, then publication in the location in which there is no newspaper may be made by posting notice in three public places in the ~~county seat or in the judicial district, as the case may be, where no such newspaper is published.~~ seat...

2. See, e.g., Pub. Res. Code § 21092(b)(3)(B), Gov’t Code § 65091(a)(5)(B), Harb. & Nav. Code § 503(f)(1).

3. County seats are designated by statute. See Gov’t Code §§ 23600-23690.

The staff did not object to those changes being made. They are peripheral to the main thrust of the Commission's recommendation. Furthermore, while the Commission might not have settled on the same solution (posting in the county seat), it seemed likely that the Commission would have agreed that *some* change was needed to address CLTA's concern about the proposed location rule being too imprecise. The county seat posting rule does not necessarily achieve local notice, but it does provide a workable bright-line rule.

The staff briefed the Chairperson on these developments by email, with the understanding that the matter would be presented to the full Commission in this memorandum. **The staff recommends that the Commission accept the committee's amendments as compatible with the spirit of its recommendation. If the Commission agrees, it should also consider whether to revise its recommendation to conform to the amendments.**

Technical Issues

On closely reviewing the bill's language, the staff discovered the following technical issues:

- *The bill contains two minor drafting errors.* The staff will seek to have those errors corrected when the bill is next amended.
- *There are a few minor technical corrections that should be made to the Commission's recommendation.* The staff will make those corrections in the recommendation, which is not yet in final form.
- *As drafted, the bill makes several minor stylistic changes to the Commission's recommended language.* Those changes should not cause any substantive problems. No action is required with respect to those changes.

ACR 148 (CHAU & ROTH). RESOLUTION OF AUTHORITY

Assembly Member Chau has introduced Assembly Concurrent Resolution 148, with Senator Roth as co-author. The resolution sets out the Commission's calendar of topics authorized for study.

At the request of the Assembly Committee on Judiciary, Assembly Member Chau revised the resolution to assign the Commission a new study:

[T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning the revision of the portions of the Government Code

relating to public records, and that this legislation shall accomplish all of the following objectives:

- (1) Reduce the length and complexity of current sections.
- (2) Avoid unnecessary cross-references.
- (3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.
- (4) To the extent compatible with (3), use terms with common definitions.
- (5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.
- (6) Eliminate duplicative provisions.
- (7) Clearly express legislative intent without any change in the substantive provisions;

...

While that language would request the Commission to undertake the new study “as soon as possible,” it does not contain a deadline and it expressly acknowledges that the work must be done within the constraints of the Commission’s existing workload and available resources. Importantly, the language calls for purely technical changes to the expression of the law, rather than substantive reform (the proposed legislation shall “express legislative intent without any change to the substantive provisions”).

SB 1473. FISH AND GAME CLEAN-UP (PART 2)

The Senate Committee on Natural Resources and Water has introduced Senate Bill 1473 to implement the Commission’s recommendation on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 2)* (Oct. 2015).

In drafting the bill, the Legislative Counsel’s office made a few small technical changes to the Commission’s recommended language. As the changes are very minor and nonsubstantive, the staff will conform the Commission’s recommendation to reflect the language of the bill.

More significantly, one code section⁴ that the Commission had proposed to amend was inadvertently omitted from the bill. The staff has contacted the committee and understands that an amendment will be made to correct that problem.

4. Fish & Game Code § 1053.5.

AB 1779 (GATTO). REVOCABLE TRANSFER ON DEATH DEED

Assembly Member Gatto successfully authored 2015 legislation that largely implemented the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).⁵

This year, Assembly Member Gatto has introduced Assembly Bill 1779, which would make a small number of refinements to the new law on revocable transfer on death deeds.

The staff has analyzed AB 1779 and finds that, among other things, it would implement one further detail of the Commission's original recommendation, which was not implemented by the 2015 legislation. The Commission had recommended that the law permit an existing trust to be named as beneficiary of a revocable transfer on death deed. AB 1779 would revise the law to permit that.

The other changes that would be made by AB 1779 are not addressed in the Commission's recommendation.

As AB 1779 proceeds, the staff will send our usual letters to the policy committees that hear the bill and eventually the Governor, explaining the bill's relationship to the Commission's recommendation. In this instance, we would explain that the bill implements one small part of the Commission's recommendation. We would expressly state that the Commission has no position on the other changes that are included in the bill.

DEADLY WEAPONS CLEAN-UP

Unfortunately, the staff did not find a 2016 author for the Commission's recommendation on *Deadly Weapons: Minor Clean-Up Issues (Part 2)* (Dec. 2015). We will revisit the matter later this year and attempt to find an author for 2017.

Respectfully submitted,

Brian Hebert
Executive Director

5. See 2015 Cal. Stat. ch. 293 (AB 139).

Status of 2016 Commission Legislative Program

As of March 24, 2016

		AB 2881	ACR 148		SB 1473						
	Introduced Last Amended	2/25/16	3/3/16		2/29/16						
First House	Policy Committee	4/19/16	4/19/16		4/12/16						
	Second Committee										
	Passed House										
Second House	Policy Committee										
	Second Committee										
	Passed House										
Concurrence											
Governor	Received										
	Approved										
Secretary of State	Date										
	Chapter #										

Bill List: AB 2881 (Committee on Judiciary). Notice Publication Districts
 ACR 148 (Chau). Resolution of Authority
 SB 1473 (Committee on Natural Resources and Water). Fish and Wildlife Clean-Up (Part 2)

Also of Interest:

AB 1779 (Gatto). Revocable Transfer on Death Deed

KEY

Italics: Future or speculative

“—”: Not applicable

*: Double referral, not fiscal

[date]: Deadline